



Emma Gilmore  
Partner

July 21, 2022

**VIA ECF**

The Honorable Margo K. Brodie  
Chief District Judge  
United States District Court for the Eastern District of New York  
225 Cadman Plaza East, Courtroom 6F  
Brooklyn, N.Y. 11201

Re: *Patel v. Koninklijke Philips N.V. et al.*, No. 21 Civ. 4606 (MKB) (E.D.N.Y.).

Dear Judge Brodie:

We represent Lead Plaintiff Richard Sun and Plaintiff Subhash Patel (“Plaintiffs”) in the above-referenced action. We write to inform the Court of an important development that occurred after Plaintiffs served on Defendants their Opposition to Defendants’ Motion to Dismiss the Amended Complaint.<sup>1</sup> In a Form 6-K filed with the Securities and Exchange Commission on April 25, 2022, Defendant Koninklijke Philips N.V. disclosed that “o[n] April 8, 2022, Philips Respironics and certain of Philips’ subsidiaries in the US received a subpoena from the US Department of Justice to provide information related to events leading to the Respironics recall. The relevant subsidiaries are cooperating with the agency.” In an earnings call with analysts that same day, CEO Frans van Houten stated that “[the Department of Justice] are preparing a [criminal] investigation . . . .”

The Court may take judicial notice of publicly available filings with the Securities and Exchange Commission (*Kravitz as Tr. of Aegean Litig. Tr. v. Tavlarios*, 2021 WL 5365582, at \*3 (2d Cir. Nov. 18, 2021)), and of subpoenas. See *United States v. TruConnect*, 2021 WL 6103553, at \*3 (C.D. Cal. Mar. 30, 2021); *Klein v. Mony Life Ins. Co. of Am.*, 2018 WL 2472916, at \*3 (C.D. Cal. May 30, 2018).

The Respironics recall goes to the heart of Plaintiffs’ claims, and the criminal investigation into the events leading to the recall corroborates the strength of Plaintiffs’ claims. See, e.g., *In re Gentiva Sec. Litig.*, 932 F. Supp. 2d 352, 380 (E.D.N.Y. 2013) (agreeing that governmental investigations can be considered as another piece of the puzzle when analyzing scienter); *In re Bristol Myers Squibb Co. Sec. Litig.*, 586 F.Supp.2d 148, 168 (S.D.N.Y.2008) (same); *Willis v. Big Lots, Inc.*, 2016 WL 8199124, at \*34 (S.D. Ohio Jan. 21, 2016) (criminal or civil investigations commenced after the class period can support an inference of scienter “if these investigations are, in fact, into occurrences during the class period and address the allegedly fraudulent behavior...”).

---

<sup>1</sup> The Opposition was served on Defendants on April 18.

Respectfully submitted,

By: /s/ Emma Gilmore

Emma Gilmore

POMERANTZ LLP

600 Third Avenue, 20th Floor

New York, New York 10016

Telephone: (212) 661-1100

egilmore@pomlaw.com

*Lead Counsel for Plaintiffs & the Proposed Class*

cc: All counsel of record (via ECF)